THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.8114 OF 2006

Dated: 28th AUGUST, 2006.

Between :

Smt. Nakka Seshamma .. Petitioner

And

1. The Syndicate Bank, rep. by its Chief Manager-Cum-Authorised Officer, Syndicate Bank, Trunk Road, Ongole, Prakasam district, And 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.8114 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the sale conducted by the 1st respondent Bank on 24-3-2006 in respect of the vacant site belonging to the petitioner i.e., land to an extent of 128 sq. yards situated in Town Sy.No.640, Block No.13, Ward No.3 of Dharavarithota, Ongole, Prakasam District as arbitrary and illegal.

It is stated that the petitioner is the absolute owner and possessor of the above property, having purchased the same from one Manne Tirupathaiah in the year 1994 under an Agreement of Sale-cum-General Power of Attorney. It is stated that the 3rd respondent herein availed a loan from the 1st respondent Bank and on a request made by the 3rd respondent, the petitioner stood as one of the sureties and the Agreement of Sale-cum-General Power of Attorney was handed over to the 3rd respondent which was in turn pledged with the 1st respondent Bank.

While so, the petitioner was informed by the officials of the 1st respondent Bank that the site belonging to the petitioner was sold on 24-3-2006 by way of public auction and she was called upon to hand over the vacant possession so as to put the successful bidder in possession.

On enquiry, the petitioner has understood that the 3rd respondent committed default in paying the outstanding loan and

consequently the 1st respondent Bank having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') put the property in question to auction fixing the reserve price as Rs.2.14 lakhs. Though the petitioner through her Counsel informed the 1st respondent that no notice was served on her at any point of time and that she is prepared to negotiate with the Bank along with the 3rd respondent to clear that part of the loan covered by the property given by her as security and requested to release the documents, the respondents 1 and 2 did not consider.

The petitioner contends that whereas the value of the plot belonging to her is Rs.5,15,000/-, the same was sold by the 1st respondent Bank on 3-4-2006 at a throw away price of Rs.2.25 lakhs. Since the possession of the property was not delivered to the successful bidder, the details of whom were not revealed by the 1st respondent Bank and particularly since the 3rd respondent failed to take any steps to clear the loan, the petitioner on her own, to prove her bona fides deposited Rs.2.25 lakhs with the 1st respondent Bank in the Savings account of her Siter-in-law Smt. K. Suseela. She got issued a notice dated 19-4-2006 to the 1st respondent informing her willingness to pay the amount and requesting not to register the property in favour of the auction purchaser. She also requested to allow her to clear the bid amount and got the property released in her favour. Since the 1st respondent failed to consider her offer, this writ petition has been filed with the above prayer.

On behalf of the respondents 1 and 2, a counter-affidavit has been filed denying all the allegations made by the petitioner. It is stated that M/s. Jyothi Enterprises, rep. by Maddela Koteswara Rao, remained defaulter. The account having become NPA, the respondent being the authroised officer issued a notice dated 03.12.2002 under Section13 (2) of the Securitisation Act to all the parties including the

petitioner under registered post. Besides that, the respondent served notice to the petitioner in person and the petitioner acknowledged by affixing her left thumb impression on 26.3.2003. However neither the petitioner nor anybody came forward to discharge the debt. Subsequently, sale notice was published in Eenadu daily dated 17.11.2004 fixing the date of auction of all the properties as 20-12-2004. Questioning the said public auction, Maddela Koteswara Rao approached Debts Recovery Tribunal, Visakhapatnam and filed Appeal No.113 of 2004 and the Debts Recovery Tribunal, Visakhapatnam granted interim stay in I.A.No.1701 of 2004, dated 10.12.2004 on condition of depositing of Rs.10.00 lakhs by Maddela Koteswara Rao before January, 2005 making clear that in default the order stands dismissed. As the said Maddela Koteswara Rao did not comply with the directions, the respondent issued notice dated 9.1.2006 to M/s. Jyothi Enterprises calling upon him to remit the amounts due to Bank within 30 days. M/s. Jyothi Enterprises, rep. by Maddela Koteswara Rao filed W.P.No.3137 of 2006 on the file of this Hon'ble Court seeking declaration that the action of the respondent without settling the claim of the petitioner under O.T.S. is arbitrary and illegal. The said writ petition was dismissed by this Court by order dated 27-2-2006.

It is also stated that as a matter of fact one Manne Venkaiah, brother of Manne Tirupathaiah, the so-called vendor of the petitioner got issued a notice dated 22-3-2006 stating that the G.P.A. in favour of Maddela Koteswara Rao and Nakka Seshamma (the writ petitioner herein) ceased long back on the death of Manne Tirupatahaih even before the creation of mortgage in favour of the Bank.

I have heard the learned Counsel for both the parties and perused the material on record.

As can be noted from the version of the petitioner herself, she was very well aware of the loan availed by the 3rd respondent from the 1st respondent Bank. She herself pleaded that she was one of the

guarantors in respect of the said loan transaction and the documents relating to her property were pledged with the 1st respondent Bank. It is not disputed before this Court that the petitioner has not initiated any steps against the 3rd respondent for redressal of her grievance, if any.

Be that as it may, the only contention of the petitioner is that though she is one of the guarantors, she was never served with any notice either under Section 13 (2) of the Securitisation Act or under Section 13 (4) of the Securitisation Act by the 1st respondent Bank and that she was not aware of the fact that the 3rd respondent committed default and that the respondents 1 and 2 were proceeding for sale of the property invoking the provisions of the Securitisation Act.

From the material placed before this Court by the 1st respondent Bank, the said allegations are found to be absolutely false and without any basis.

The notice under Section 13 (2) of the Securitisation Act was served on the petitioner on 26-3-2003. Subsequently, sale notice was published in local dailies, questioning which, the principal borrower filed an appeal before the Debts Recovery Tribunal, Visakhapatnam and the proceedings are pending from 2004 onwards. The Principal borrower also field a writ petition, which was dismissed by this Court. It is also clear that the principal borrower as well as the petitioner are represented by the same counsel and they have been jointly negotiating with the respondent Bank.

Since the 3rd respondent, borrower, committed default in payment of the principal debt and since the facts that the loan account was classified as Non-Performing Asset (NPA) and that the plot in question was one of the items of the secured asset and that the 1st respondent bank is a secured creditor are not in dispute, I do not find any substance in any of the contentions raised by the petitioner. The respondents 1 and 2 had rightly invoked the provisions of the

Securitisation Act and the material on record shows that the procedure contemplated has been complied with. In case, the petitioner has any grievance against the 3rd respondent-borrower, it is always open to her to proceed against the 3rd respondent by working out the remedy as available under law, but the present writ petition, on the face of it, is misconceived. Even the plea of the petitioner that she had deposited a sum of Rs.2.25 lakhs in the 1st respondent's Bank in the account of her sister-in-law has been categorically denied by the respondents in their counter-affidavit.

It would be appropriate to extract the version of the respondents with regard to the amount said to have been deposited by the petitioner.

> *"It is submitted that upon verification of the account of Smt. K. Suseela, it is found that an amount of Rs.1.20 lakhs is deposited into the said account on 28.03.2006 and another sum of Rs.1.05 lakhs has been deposited into the said account on 03.04.2006.*
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> *It is submitted that the petitioner having got issued lawyer notice through her Advocate Sri P.V.S. Gupta, who is also the Advocate of Maddela Koteswara Rao (original borrower) having got issued notice dated 22.03.2006 on behalf of Manne Venkaiah with specific reference to the G.P.A. in favour of the petitioner. This respondent got served a reply to her Advocate on 23.03.2006 at 9 PM. Nothing prevented the petitioner to approach this respondent before 24.03.2006 to offer payment straight away. If really the said amount is deposited by her in her sister-in-law's account, she would have stated it atleast in her reply lawyer notice dated 03.04.2006 about deposit of Rs.1.20 lakhs on 28.03.2006 and would have offered payment of Rs.1.05 lakhs through that said notice dated 03.04.2006 instead of depositing the same in her sister-in-law's account on 18-04-2006. Therefore the entire allegations in the petition with regard to her depositing Rs.2.25 lakhs in her sister-in-law's account and approaching this Hon'ble Court throwing blame against this respondent claiming as if she is innocent of the events is nothing*

but an abuse of process of Court. It is further submitted that the alleged payment of Rs.2.25 lakhs into the account of Smt. K. Suseela on 28.03.2006 and 18.04.2006 are subsequent to the date of sale i.e., 24.03.2006. Smt. K. Suseela is a stranger to the transactions. Any deposit or withdrawal from the account of the said Smt. K. Suseela is not relevant. This respondent has no privity of contract with the said Smt. K. Suseela. As submitted above, at no point of time, petitioner informed this respondent about her intention to deposit or the factum of deposit as such. Petitioner cannot rely on those two deposits made in by a stranger as a basis to the present writ petition. It is submitted that the present writ petition is completely at the instance of the original borrower Maddela Koteswara Rao, who failed in all his attempts to stall the auction as per the Securitisation Act."

For the aforesaid reasons, the allegations made by the petitioner which are unfounded cannot be accepted. The writ petition is without any substance and the same is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 28.8.2006

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